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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,118	10/27/2000	Duane Girard Uitenbroek	KCC-14,607	6282
35844	7590	07/29/2004		EXAMINER
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195				WACHTEL, ALEXIS A
			ART UNIT	PAPER NUMBER
			1764	

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/698,118	UITENBROEK ET AL.
	Examiner	Art Unit
	Alexis Wachtel	1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 4 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 5-18-04.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 22,26-37 and 39-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 22,26-37,39-51 and 54-57 is/are rejected.
- 7) Claim(s) 52 and 53 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

***Detailed Action***

***Response to Amendment***

1. Applicant's amendment and accompanying Remarks filed 5-18-04 have been entered and carefully considered.

The amendment is sufficient to overcome the obviousness rejections of claims 22,26-37,39. Claims 40-57 were added for consideration. However, an updated search yielded new prior art that provides a new basis of rejection as shown below. Applicant's arguments are rendered moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22,26-37,40,41,43,45-51,54,57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of US 6,197,404 to Varona.

With respect to claims 22,37,54 and 57 Mormon 028' teaches an elastic stretch, breathable laminate (Col 2, lines 6-8) consisting essentially of a water vapor-permeable elastic film comprising a polymer selected from a group consisting of polyurethanes, polyether amides, polyester elastomers and combinations thereof (Col 2, lines 1-5); and a whereby the film has a water vapor transmission rate of at least 500 grams/m<sup>2</sup>-24 hours (Col 6, lines 13-18).

With respect to claims 22,37,54 and 57 Mormon 028' fails to teach the use of spunbond nonwoven web, having machine direction stretch and cross direction stretch, bonded to the film, wherein the spunbond nonwoven web is creped. Varona teaches a creped nonwoven web that has low density, high permeability and excellent softness (Col 1, lines 57-59). The nonwoven is spunbonded and can be made of polypropylene or polyurethane and can be made of multicomponent fibers (Col 5, lines 47-62). The creped nonwoven has machine/cross machine direction stretch (Col 7, lines 38-60). In view of this teaching it would have been obvious to one of ordinary skill to have replaced the spunbonded nonwoven disclosed by Mormon 028' with the creped spunbonded nonwoven as disclosed by Varona. One of ordinary skill would have been motivated by the desire to obtain a biaxially stretchable composite having low density, high permeability and excellent softness which is desirable for the end user.

With respect to claim 26: Wherein the film and web are thermally bonded together (Mormon 028', Col 7, lines 66-67; Col 8, lines 1-8).

With respect to claim 27: Wherein the film and web are adhesively bonded together (Mormon 028', Col 7, lines 54-57).

With respect to claim 28, the method limitation wherein the film and web are bonded together via an extrusion coating process is given patentable in so far as the effects the claimed method has on the structure or chemistry of the resulting final product. It is believed that the claimed process will be identical to a web that is thermally bonded to the film as disclosed above.

With respect to claims 29-35,48-50: although the claimed stretch ratios are not explicitly taught by Mormon '028 or Varona, it is reasonable to presume that said limitations would be met by the combination of the two references. Support for said presumption is found in the use of similar materials (i.e. MD/CD stretchable laminate made from a MD/CD stretchable nonwoven spunbonded web that has been creped and an elastic water vapor permeable polymeric film) and in the use of similar production steps (i.e. creping nonwoven and bonding nonwoven to polymeric film) used to produce the breathable elastic laminate. The burden is on the Applicant to prove otherwise.

With respect to claim 36: An absorbent article outer cover (Mormon 028', Col 1, line 50).

With respect to claim 40: wherein the film comprises a thermoplastic polyurethane (Mormon 028', Col 2, lines 1-5).

With respect to claim 41: wherein the film comprises a polyether amide (Mormon 028', Col 2, lines 1-5).

With respect to claim 43: wherein the film comprises a monolithic film including a breathable polymer (Mormon 028', Col 2, lines 1-5).

With respect to claim 45: wherein the film has a water vapor transmission rate in a range of about 750 to about 50,000 grams/m<sup>2</sup>-24 hours (Mormon 028', Col 6, lines 13-18).

With respect to claim 46: wherein the film has a water vapor transmission rate in a range of about 37,000 to about 40,000 grams/m<sup>2</sup>-24 hours (Mormon 028', Col 6, lines 13-18).

With respect to claim 47: Mormon 028' as set forth above fails to teach that the film has a basis weight in a range of 5 to 20 grams per square meter. However, it is well within the realm of the skilled practitioner to determine the optimal weight range of the film through the process of routine experimentation.

With respect to claim 51 although Mormon 028' and Vorona teach the use of a creped spunbond that can be made of multicomponent fibers, the two references are silent as to the specific type of multicomponent fibers used. However, since side by side multicomponent fibers are a subset of multicomponent fibers it would have been obvious to have employed side by side multicomponent fibers. One of ordinary skill would have been motivated by the desire to use a specific multicomponent fiber type that readily functions as a bonding fiber.

4. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over (Morman '028) in view of US 6,197,404 to Varona and US 5,554,143 to Roe et al.

With respect to claim 39, Mormon 028' teaches an elastic stretch, breathable laminate (Col 2, lines 6-8) consisting essentially of a water vapor-permeable elastic film comprising a polymer selected from a group consisting of polyurethanes, polyether amides, polyester elastomers and combinations thereof (Col 2, lines 1-5); and a whereby the film has a water vapor transmission rate of at least 500 grams/m<sup>2</sup>-24 hours (Col 6, lines 13-18).

With respect to claim 39, Mormon 028' fails to teach the use of spunbond nonwoven web, having machine direction stretch and cross direction stretch, bonded to the film, wherein the spunbond nonwoven web is creped. Varona teaches a creped

nonwoven web that has low density, high permeability and excellent softness (Col 1, lines 57-59). The nonwoven is spunbonded and can be made of polypropylene or polyurethane and can be made of multicomponent fibers (Col 5, lines 47-62). The creped nonwoven has machine/cross machine direction stretch (Col 7, lines 38-60). In view of this teaching it would have been obvious to one of ordinary skill to have replaced the spunbonded nonwoven disclosed by Mormon 028' with the creped spunbonded nonwoven as disclosed by Varona. One of ordinary skill would have been motivated by the desire to obtain a biaxially stretchable composite having low density, high permeability and excellent softness which is desirable for the end user.

Mormon 028' and Varona as set forth above fail to teach pre-stretching the film used in the breathable elastic laminate prior to bonding it to the spunbonded nonwoven web.

Roe et al is directed to absorbent articles such as diapers, incontinent briefs having an extensible waist feature (Col 1, lines 10-15). Extensible back waist features preferably comprise a structural elastic-like film (SELF) web (Col 2, lines 54-59). It may be desirable for the (SELF) web to exhibit a certain degree of bulkiness. One method of providing this bulk includes forming a polymeric film, prestretching it and subsequently applying a nonwoven to one or both sides of said film while said film is in a prestretched state. Upon relaxation of the film's stretch, the nonwoven material forms puckers which give the material added bulk (Col 24, lines 38-48). In view of this teaching it would have been obvious for one of ordinary skill in the art at the time the invention was made to have prestretched the film as set forth above before applying to the spunbonded

nonwoven web, motivated by the desire to impart bulk to the resulting laminate and thusly increase the cushioning capabilities of said laminate.

5. Claims 44, 56, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of US 6,197,404 to Varona and US 6,479,154 to Walton et al.

With respect to claims 44 and 56, Mormon 028' and Varona fail to teach that the film comprises is a breathable microporous film and that the facing material comprises a single site catalyzed elastomer. Walton et al teach a breathable elastic multilayered film (Abstract) that can be made from single site catalyzed polymers (Col 9, lines 28-33).

The film has microporous voids in it (Col 4, lines 25-27). Since the film of Walton et al is equivalently suitable for the utility disclosed by Mormon 028', it would have been obvious to one of ordinary skill to have replaced the breathable film disclosed by Mormon 028' with the film disclosed by Walton et al motivated by the desire to use a higher performance, more durable or cost effective breathable film.

6. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of US 6,197,404 to Varona and US 5921973 to Newkirk et al.

With respect to claim 42, Mormon 028' and Varona fail to teach that the film comprises a polyester elastomer. Newkirk et al teach that elastic films can be made from polyester elastomers such as HYTREL sold by E.I. Du Pont De Nemours Company (Col 7, lines 13-30). Since the elastic film disclosed by Newkirk et al is equivalently suitable for the utility disclosed by Mormon 028', it would have been obvious to one of ordinary skill to have replaced the film disclosed by Mormon 028' with the film disclosed

by Newkirk et al motivated by the desire to use a higher performance, more durable or cost effective breathable film.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of US 6,197,404 to Varona and US 5,916,663 to Chappell et al.

With respect to claim 55, Mormon 028' and Varona fail to teach that the spunbond nonwoven comprises a thermoplastic elastomer. Chappell et al teach that elastic webs can be made from thermoplastic elastomers. Such webs can be used in the form of spunbonded nonwoven fabrics (Col 21, lines 18-39). Since thermoplastic elastomers lend elastic properties to webs, it would have been obvious to have improved the elasticity of the spunbonded nonwoven used by Mormon 028' and Varona.

***Allowable Subject Matter***

8. Claims 52 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to claim 52, no prior art has been found to teach the use of a spunbonded nonwoven having a primary side comprises polypropylene and the secondary side comprises a polymer that quenches in a differential manner than polypropylene. At best, the closest prior art combination to Mormon 028' and Varona teach a spunbonded that can be made of polypropylene and other polymeric materials. Claim 53 is also allowable for depending on claim 52.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Glenn Calderola can be reached at (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Glenn Calderola  
Supervisory Patent Examiner  
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